

To:	Legal Services Board	
Date:	26 November 2015	Item: Paper 15 (59)

Title:	Cost of Regulation - Reports on transparency of reporting
Workstream(s):	Breaking down regulatory barriers
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Status:	Official

Purpose of paper:
This paper updates the Board on progress on the cost of regulation project's cost of regulators work stream.

Recommendation(s):
The Board is invited to: <ul style="list-style-type: none"> • <u>endorse</u> the approach outlined in this paper • <u>approve</u> publication of the reports subject to checking each report with the relevant regulators, on the understanding that we would return to the Board for approval should this process result in significant variation to the reports.

Risks and mitigations	
Financial:	None
Legal:	There is both a legal and reputational risk to the LSB that the reports are perceived as misleading and/or unfair. This risk is mitigated by checking reports with regulators before publication.
Reputational:	See above
Resource:	There is a risk that the feedback process with the approved regulators on these reports may take longer than anticipated.

Consultation	Yes	No	Who / why?
Board Members:	√		Lead Board member (Marina Gibbs) has been consulted on the approach to the transparency of reporting work stream.
Consumer Panel:		√	
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Section 22: information intended for future publication	N/A

LEGAL SERVICES BOARD

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Reports containing analysis of the costs of the regulators

RECOMMENDATION

1. The Board is invited to:
 - endorse the approach outlined in this paper
 - approve publication of the reports subject to checking each report with the relevant regulators, on the understanding that we would return to the Board for approval should this process result in significant variation to the reports.

Introduction

2. As part of the cost of regulation project the LSB is assessing the cost of all the legal sector regulators including the LSB. The original intention was to conduct a benchmarking exercise but as explained in the June CEO update to the Board regulatory benchmarks do not currently exist and creating such benchmarks would be beyond the resources of the LSB. Therefore, the focus of this work stream shifted from seeking to benchmark the cost of regulators to providing greater transparency of the costs of regulators.
3. The long term objective of this work stream is to increase transparency around the cost of the legal sector regulators. The aim is to factor in both effectiveness and efficiency as cheap regulation does not necessarily equal effective regulation. The regulatory standards work is the appropriate mechanism to address effectiveness.
4. In light of concerns voiced by authorised individuals and firms about the cost of regulation that they face, the LSB is committed to transparency about the cost of regulation in this sector. As the oversight regulator, the LSB has a legitimate interest in the cost of regulators which contributes to the overall cost of regulation. In shining a light on the cost of regulators we have found gaps in the readily available data.
5. The hope is that increased transparency will generate increased incentives for the regulators to provide good value for money to their regulated communities. A focus on value for money may prompt greater discussion and awareness of the cost profiles of the different regulators. In such a situation, regulators might seek to decrease their costs where this can be done while maintaining satisfactory

regulatory standards. Any cost savings should ultimately be passed on to consumers and thus serve access to justice and consumer interest objectives.

6. The LSB has produced a report for every legal sector regulator analysing its costs. In order to minimise the workload of the regulators these reports rely on readily available data only rather than asking the regulators to provide additional data. This approach limits the amount of useful information that can be reported on. However, the limitations of the readily available information is an important finding from this work in its own right.
7. As the regulatory bodies are very different from each other in scope and size we have not compared the regulators directly against each other. Instead we have compared regulators against themselves by producing time series of cost profiles between 2010 and 2014. Data permitting, we have produced the same charts for each regulator and then produced an individual report for each regulator.
8. Across the regulators there is variation in the scope, detail and clarity of financial information. As regulatory accounting formats are unique to each regulator the same charts for each regulator in some cases look different as we have had to work with different underlying information. For each regulator we have attempted to produce information across these six areas, covering the period between 2010 and 2014:
 - (1) number of authorised persons and firms per regulator
 - (2) average practising certificate fee (PCF) per regulator (individual and entity)
 - (3) cost of regulator relative to PCF income and other income used to fund the cost of the regulator
 - (4) spend of the approved regulator on non-regulatory permitted purposes
 - (5) spend on regulatory functions over time
 - (6) unit costs of regulators.
9. Across the reports, there were a number of charts which we were unable to complete or which once completed were so confusing as to be meaningless (for example because cost categories changed during the time period under consideration). In situations where a chart either cannot be produced or the chart is meaningless, we propose to leave a blank space in the report and set out a high-level, objective reason for their absence. As we have never previously required data to be published in any particular format, the reports will not criticise the regulators on account of poor or missing data.
10. Each report contains an introduction with details about the cost of regulation project and analysis which is repeated across all the reports, although individual

sections are tailored to each regulator where necessary to reflect differences in particular data and operating models. This introduction does not set out any future activity that the LSB might undertake to address the fact that across the regulators there is variation in the scope, detail and clarity of financial information. A discussion paper drawing together the evidence from across the cost of regulation project is the appropriate place for a discussion about next steps in response to the learnings from this piece of work.

11. Producing these reports has been a challenge as data is rarely available in an easily accessible format. As the data has been drawn together from a number of different sources there is a risk that the data is inconsistent and that conclusions are misjudged. The full suite of reports is going through substantial quality control within the LSB to minimise this risk. Once this process has concluded, subject to the Board's approval, we will next share the reports with the regulators for checking and ask specific questions where there are gaps or the basis for the published data is unclear.
12. The accuracy of the data is paramount and we are mindful of the need to handle sensitively communication of any trends or messages emerging from the work. Therefore, we plan to provide each regulator with a reasonable time period to check the factual accuracy of the data. This will allow them to alert the LSB to any other readily available data, which should be reflected in the report and provide an opportunity for bilateral meetings where necessary, prior to publication. We are not proposing to include new data which is not currently readily available and as such we expect to publish the reports with gaps where data is currently unavailable.
13. This Law Society / Solicitors Regulation Authority (TLS/SRA) report is provided as an example of our approach. Note that this is a more complex report than the others because:
 - the SRA authorises individuals and entities and licenses alternative business structures.
 - the SRA changed its accounting period during the period covered by the transparency of reporting work stream.
 - the practising certificate income is shared between the SRA and TLS for regulatory and non-regulatory permitted purposes respectively.
 - the SRA and TLS share corporate services.
14. If the Board is content with the methodology and narrative of the attached SRA report the aim is to publish the reports, once individual regulators have had the opportunity to ensure the accuracy of their reports. As noted in paragraph 2 above, this will include a report on the LSB, to demonstrate that we are

subjecting ourselves to the same scrutiny as the frontline regulators. As the SRA/TLS is the largest approved regulator, we will publish this report first to create a template for the following reports. While the reports will be published sequentially they will all cover the same time period and high level areas and will treat all regulators including the LSB equally.

Recommendation

15. The Board is invited to:
 - endorse the approach outlined in this paper
 - approve publication of the reports subject to checking each report with the relevant regulators, on the understanding that we would return to the Board for approval should this process result in significant variation to the reports.